

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF PARKS AND FORESTRY

OPERATING AGREEMENT

THIS AGREEMENT, made the _____ day of _____ in the year Two Thousand and Eleven (2011).

BETWEEN

The State of New Jersey
Department of Environmental Protection
Division of Parks and Forestry
Mail Code: 501-04
P.O. Box 420
Trenton, New Jersey 08625

hereafter referred to as Department,

AND

hereafter referred to as Operator.

WHEREAS, Department is the Owner of Liberty State Park; and

WHEREAS, pursuant to Request for Proposal #_____ for Operator for Liberty State Park (the “RFP”), a copy of which is attached hereto and made part hereof as Exhibit A, (Winning Bidder’s Name), (“Operator”), wishes to enter into this Operating Agreement to operate and manage food, beverage and concession sales and catering and events management services on portions of Liberty State Park (“Park Property”), as more particularly described below; and

WHEREAS, the Department, subject to the terms set forth in the RFP, is willing to enter into this Operating Agreement under the provisions, covenants, terms, and conditions hereinafter described, which shall be consistent with the terms set forth in the Operator’s Bid Response Proposal submitted in response to the RFP (“Bid Proposal”), a copy of which Bid Proposal is attached hereto and made a part hereof as Exhibit B; and

NOW THEREFORE, this Operating Agreement is made and entered into on (DATE), by and between the Department, its successors and assigns, and Operator and its successors and assigns. This Operating Agreement shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors, and assigns.

THE PARTIES HERETO, for themselves, their heirs, distributes, executors, administrators, legal representatives, successors, and assigns, for good and valuable consideration, the exchange, receipt, and sufficiency of which is hereby acknowledged, hereby covenant and agree as follows:

1. PARK PROPERTY

The Department hereby grants Operator the exclusive right to operate, maintain, and manage food, beverage and concession sales and catering and events management services on certain Park Property (as hereinafter described) situated within Liberty State Park for the Term of

this Operating Agreement (as hereinafter described), together with all appurtenances thereto.

(The following description of the Park Property encompasses all possible areas available to Operator in the Request for Proposal, but will be tailored based on the successful bidder's proposal). The Park Property consists of: Rooms 101, a portion or all of 107, 110, 116, 210, 215, 216, 218, 206(a and b), 302, and 306, in the Central Railroad of New Jersey Terminal ("Terminal Building"), the Concourse, South Field, Gate House, Rail Car, and specific outdoor areas adjacent to walkways, the Plaza, certain parking lots, Liberty Walk, and the playground, all as depicted on the diagram and maps attached hereto and incorporated by reference as Exhibit C. The Park Property is situated in those portions of Liberty State Park that are designated as Block 2145, Lots 53, 55, 56, & 57 on the tax maps of the City of Jersey City, Hudson County.

Operator may have access to parts of Liberty State Park outside the Park Property for the Fourth of July celebration and special events approved by the Department on a case by case basis.

It is expressly understood that this Operating Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee, or other interest in the Park Property or Liberty State Park to the Operator.

2. SCOPE OF OPERATING AGREEMENT

A. Operator shall be granted the exclusive right to operate, maintain, and manage food, beverage, novelty and souvenir sales ("Basic Concession Services"), daily from January 1 to December 31. Basic Concession Services shall be open for business from 8 a.m. to 6 p.m. each day, at the following areas of the Park Property:

- Administration Building Concession Area (excluding mobile units)
- Gatehouse
- Train Baggage Car (mobile unit may be placed outside car)*
- Historic CRRNJ Terminal, specifically inside the following locations:
 - Northeast Entryway to Waiting Room (excluding mobile units)
 - Room #116 (excluding mobile units)
 - Approximately 1,000 sq ft in Room 107 (which Operator may convert to a kitchen)
 - Limited Partial Access to the South Tunnel
- Walkways (limited to mobile unit)*
- Plaza* (limited to mobile unit)
- Parking lots* (limited to mobile unit)
- Liberty Walk* (limited to mobile unit)
- Playground* (limited to mobile unit)

**as approved in Mobile Unit Plan*

B. Operator shall possess the ability to provide concession services to any additional location within the Park at the direction of the Department with as little as twenty-four (24) hours' notice.

C. Operator shall provide all concession services and staffing for the annual Fourth of July celebration at Liberty State Park, which attracts approximately 60,000 to 80,000 visitors and typically requires ten to fifteen (10 to 15) additional food concession areas/carts/stands located throughout Liberty State Park. Operator shall submit a separate management plan for the Fourth of July celebration to Department by May 1 of each year for approval, detailing the event staffing and services to be provided.

D. Operator shall be granted the exclusive right to operate, maintain and manage catering and events management services (“Catering/Events Management”) at the following areas of the Park Property:

- Waiting Room (Room #101): 6,000 sq ft. High ceiling, fully enclosed, HVAC, historic room with tile floor. Capacity: 400 seated, 1,400 standing. Availability: After 5:30 p.m.
- Blue Comet Auditorium (Room #110): Historic auditorium style room, with dimmable lighting, sound system and overhead LCD projector, modern stained glass ceiling and carpet flooring. Capacity: 125 seated. Availability: After 3:30 p.m.
- Room #116: 630 sq. ft. Unfinished storage area with large stainless steel sinks, electricity and concrete flooring. Availability: all hours
- Kitchen Area (Room #107, part of): Approx. 1,000 sq ft. High ceilings with rubber tile flooring. This area is currently being used as a security screening area, but will be available for use as a kitchen. Utility hook-ups are available, but Operator will have to purchase and install all necessary catering and/or restaurant fixtures, equipment and inventory. Availability: all hours
- vii. Restaurant (optional) (Room #107, part of): Approx. 1,580 sq.ft Availability: 8:00 a.m. to 2:00 a.m..
- Riverside Conference Room (Room #215): 969 sq ft. Corner office. Overhead LCD projector, baseboard heat, double-hung windows, drywall, acoustical ceiling tiles, sprinklers and sink. Set up as conference room, seating 40. Views of Hudson River and Manhattan. Availability: all hours
- Room #210: Conference room. Availability: all hours
- Room #216: 620 sq ft. Views of Hudson River and Manhattan Availability: all hours
- Room #218: 567 sq ft. Views of Hudson River and Manhattan. Availability: all hours
- Classroom (Room #206a): 591 sq ft. South view with partial views of Ellis Island and Statue of Liberty. Vinyl floor tile, drywall and exposed brick, 2 x 2 ceiling tiles, incandescent lighting. Availability: all hours
- Classroom (Room #206b): 727 sq ft. South view with partial views of Ellis Island and Statue of Liberty. Vinyl floor tile, drywall, 2 x 2 ceiling tiles, ceramic sink, wood cabinets. Availability: all hours
- Room #302: 1,105 sq ft. Limited North and South views, wood support beams, 7 ft ceiling height under HVAC ducts. This room will be available as a storage area for alcoholic beverages and records pertaining to the purchase and sale of such beverages. If used for this purpose, Operator will be required to enter into a separate lease agreement for nominal rent to comply with the Division of Alcohol and Beverage Control regulations. Availability: all hours
- Room #306: 1,173 sq ft. East views of Hudson River and Manhattan. Commercial carpeting, drywall, ceiling tiles and baseboard heat. Availability: all hours
- Concourse: 23,000 sq ft. Historic structure, large roof-covered outdoor area, open wall, no HVAC, concrete floor. Capacity: 1,800 seated and 3,000 standing. Availability: after 6:00 p.m.

- South Field: Approximately 750 ft by 200 ft. Grass field without amenities. Availability: after 6:00 p.m.

E. Operator shall also have the exclusive right to construct and operate a kitchen and restaurant in the following areas of the Park Property: Kitchen, Restaurant (*Optional, depending on successful bidder's proposal*)

F. A liquor license is not included as part of the RFP or the Operating Agreement. It will be the responsibility of the Operator to apply to the Division of Alcoholic Beverage Control (ABC) for, and be qualified to hold, a license to sell and serve alcoholic beverages for on-premise consumption. (*Based on Operator's Operational Management Plan submitted with its proposal, the final Operating Agreement will include specific areas within Park Property in which Operator will have the right to serve alcoholic beverages and the times those beverages will be sold, pending grant of license by the Division of Alcohol and Beverage Control.*) The Department will require Operator to enter into a separate lease agreement for nominal rent for the room in which Operator will be storing alcoholic beverages and records related to the purchase and sale of said beverages, pursuant to ABC regulations.

G. The rights and privileges granted to Operator in this Agreement shall not be construed to restrict, condition, or prevent Department from scheduling activities, events, or affairs on Park Property as part of Department's management and operation of Liberty State Park. The Department, including Liberty State Park and the State Park Service, reserves the right to organize and manage up to five events a year on Park Property, and shall provide Operator with no less than 90 days notice of such events.

(Other services may be added to this section based on the successful bidder's proposal).

3. TERM

A. The Term of this Agreement shall begin December 1, 2011 ("Effective Date"), at which time this Agreement shall take full force and effect. Operator shall operate the Park Property during the Term of this Operating Agreement beginning on the Effective Date and continuing for a period of ten (10) years (the "Initial Term") from that date until the expiration of the Operating Agreement ("Expiration Date"), unless the Operating Agreement shall end sooner pursuant to any of the terms, covenants, or conditions, herein provided or pursuant to law. The Department may terminate this Agreement during the Term of the Agreement in accordance with the termination provisions as contained herein, in the RFP, or in accordance with applicable law. In the event of such termination, after expiration of the notice period, Operator shall not be permitted to enter the Park Property without accompaniment of a representative of the Department.

B. Provided that no event of default has occurred and is continuing, Operator may request that the term of this Agreement be renewed for an additional five (5) year period (the "Renewal Term") by giving Department written notice of Operator's request to renew no less than one hundred and eighty (180) days prior to the expiration of the Initial Term of this Agreement. Department reserves the right to disapprove renewal of this Agreement if Department determines that Operator has not satisfactorily complied with the terms, covenants, or conditions herein provided or pursuant to law or that continuation of this Agreement is not consistent with reasonably anticipated plans for development or use of the Park Property by Department. In the event that Operator's request for renewal is not approved by Department on or before sixty (60) days prior to the scheduled expiration date of this Agreement, said request shall be deemed to have been denied, and this Agreement shall expire as herein provided. The Initial Term and the Renewal Term are hereinafter collectively referred to as the "Term." This Agreement shall not be renewed upon the expiration of the Renewal Term. Operator shall not continue operation of the Park Property beyond the expiration of the Renewal Term except upon execution of a new Agreement or as provided for in Paragraph 57 hereof.

4. CATERING/ EVENT MANAGEMENT SERVICES

A. The Department reserves the right to disapprove of an event based on, but not

limited to, such reasons as conflicts with other events occurring at Liberty State Park (see Paragraph 4B), security concerns, inconsistency with Operational Management Plan and the integrity of Liberty State Park, the event not being an appropriate use of a public facility, the event not constituting a permissible use of Park Property.

(i) Operator shall not schedule events on dates coinciding with large concerts and events at Liberty State Park, including the Fourth of July celebration, Earth Day celebration (to be held on a weekend date near the actual Earth Day), and any other Department-sponsored events held at the Terminal Building (approximately five [5] per year). The State Park Service (SPS) shall notify Operator, as far in advance as possible, but at least ninety (90) days prior to any SPS- or Department-sponsored events that require the use of Park Property.

B. No candles or open flames of any type are permitted within any portion of the Terminal Building. No decorations, apparatuses, or devices of any kind shall be placed or secured to the Terminal Building's second or third floors, including but not limited to the railings, banisters, pillars, balconies, and beams.

C. For each event on Park Property, Operator shall mobilize, set up, serve, break down, and return the Park Property to its original condition by 7:00 a.m. the next day. Returning Park Property to its original condition includes, but is not limited to, cleaning, furniture rearrangement, and trash removal. The Department shall assess additional fees for its cost of cleaning the Park Property and returning the Park Property to pre-event condition if Operator does not meet this obligation. Repeated failure to meet this obligation may result in alteration of acceptable event timeframes and may be deemed a default of the Agreement.

5. ADDITIONAL STATE PARK SERVICE AND STATE PARK POLICE STAFF

A. The Operator is solely responsible for providing all staff necessary for the management and catering of any event scheduled on Park Property. The SPS and/or State Park Police (SPP) will not be available to support or assist with any scheduled events, unless the Department requires such support staff pursuant to Paragraph 5B or unless the Department pre-determines and approves such State employees to assist.

B. A Black Seal approved SPS maintenance employee is required to be on-site for events that take place when the Terminal Building's boiler is in operation. The cost of the SPS maintenance employee will be the sole responsibility of the Operator for events occurring during hours the park is closed to the general public.

C. Operator is solely responsible for providing security. Notwithstanding the Department's reliance on Operator to furnish all necessary staffing, the Department reserves the right to require additional security to be provided by the State Park Police (SPP) or additional SPS maintenance employee(s) if deemed necessary by Department due to the size and/or scope of an event. The total cost of any additional SPS or SPP employee(s) shall be the sole responsibility of the Operator.

6. PARKING AND DELIVERIES

A. Guests attending events at the Park Property held after normal Park operating hours shall park in the parking lot adjacent to the Terminal Building ("Ferry Parking Lot") as depicted on the map attached hereto as Exhibit C. The Department has a management agreement with Central Parking Systems, Inc. ("Parking Vendor"), to maintain and operate the Terminal Parking Lots ("Ferry Parking Lot" and "2-Hour Lot"). Under the terms of this agreement, the Parking Vendor has the authority and responsibility to collect parking fees for events held after normal park operating hours, provide valet parking and remove snow and ice from Terminal Parking Lots. Operator will be bound by the terms of the Department's current and future management agreements for Terminal Parking Lot. The current agreement with the Parking Vendor has been extended to October 31, 2011.

- B. A fee will be charged to anyone who utilizes the “2-Hour Parking Lot,” as depicted on the map attached hereto as Exhibit C, for more than two hours. Said fee may be paid in advance by another party.
- C. Exclusive parking for Operator, its employees and prospective event customers, shall be at Ferry Parking Lot, shown on the map attached hereto as Exhibit C.
- D. Operator may allow deliveries and pickup of supplies behind the Terminal via gravel road and shall use its best efforts to ensure that such deliveries and pickups do not interfere with operations at Liberty State Park.
- E. Operator is completely responsible for the cleanliness of any parking area used during an event. The Department reserves the right to charge Operator a fee for any additional clean-up by State Park Service employees that is attributable to any evening or off-hours event held or organized by Operator.

7. PAYMENTS TO THE DEPARTMENT

A. Operator shall pay to Department an annual Operating Agreement Payment in the amount of _____ Dollars (\$_____) (“Base Payment”) plus an additional payment of a percentage of gross revenue (“Variable Payment”). The base payment is payable on the Effective Date of this Agreement, and on the anniversary of the Effective Date for the remainder of the Term. The Variable payment for the First Term Year shall be due on (enter date) of the Second Term Year and on (enter date) of every year for the prior Term Year thereafter for the remainder of the Term. The Base Payment shall annually increase by three (3) percent on the anniversary of the Effective Date.

B. For purposes of calculating the annual Variable Payment, gross revenue is defined to include all sales at the gross selling price of merchandise and items of every character sold in, upon, or through the Park Property by the Operator, or any other person, firm, or corporation, including, but not limited to, all revenues and sales related to the food and beverage, novelty and souvenir, catering and event management operations at the Park Property, and gross charges for all services to customers or patrons, and shall include sales and charges for cash and credit, regardless of whether or not the same is collected or uncollected, less all proper credits for returned merchandise, merchandise exchanges and merchandise cancellations, allowances, or discounts, as well as any sales taxes collected by the Operator and remitted to taxing authorities with respect to each Term Year as provided in the Operating Agreement.

C. All Operating Agreement Payments shall be paid by check made payable to "Treasurer-State of New Jersey" and sent to:

Liberty State Park
200 Morris Pesin Drive
Jersey City, New Jersey, 07305

D. Any Operating Agreement Payment not made on or before the date provided in Subparagraph 7A hereof shall be considered past due. All past due amounts shall be assessed a monthly penalty of one and one-half percent (1.5%) of the total amount due calculated on the tenth (10th) day of each month.

E. In the event any check for payment is returned to Department, all future compensations shall be made by Certified or Cashier Checks only.

8. RECORDS, MEETINGS, AND AUDIT

A. Operator shall maintain complete and adequate financial records that will allow Operator to prepare financial statements in accordance with generally accepted accounting principles. Operator shall retain such records for at least six (6) years from the expiration or termination of this Agreement. Such records shall be made available for audit during normal business hours by an authorized representative of Department to determine the adequacy of

Operator's financial management systems and internal control systems established to meet the terms and conditions of this Agreement and that the financial statements are fairly presented in accordance with generally accepted accounting principles. The results of any audit by the Department shall be final and binding on the Operator, including but not limited to the Department's determinations with respect to revenue reporting and payment by the Operator.

B. Operator shall prepare and compile, or oversee the preparation and compilation of, and submit to the Department a quarterly financial report itemizing actual revenues and expenses against projected revenues and expenses.

C. Operator shall, on or before February 28 of each year, conduct and provide Department with a complete audit of its gross revenue for the prior calendar year ending December 31 prepared by a Certified Public Accountant licensed to practice accounting in the State of New Jersey ("Audit"). In the alternative, Operator may provide a special report as prescribed in Statement on Auditing Standards No. 62 prepared by a Certified Public Accountant licensed to practice accounting in New Jersey to fulfill this requirement ("Special Report").

D. Operator, its contractors, and subcontractors, shall provide the Department, through an authorized representative, reasonable access to and the right to examine all records, books, papers, or documents reasonably related to Operator's operation of any part of the Park Property and any services being performed pursuant to any contract or subcontract. Proper facilities shall be furnished for access and inspection. The Department has the right to request, and the Operator agrees to provide free of charge, all information and copies of all records.

E. The Operator shall confer with the Department and attend meetings with Department officials and other persons as reasonably requested by the Department to discuss matters relating to the operation and development of the Park Property.

F. All data, technical information, materials gathered, originated, developed, prepared, used, or obtained in the performance of this Agreement, including but not limited to all reports, surveys, plans, charts, literature, brochures, mailings, records (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures, and documents, regardless of the state of completion, which are prepared for or are a result of the services required under the Operating Agreement, shall be and remain the property of the Department and shall be delivered to the Department upon thirty (30) days' notice by the Department.

G. All financial, statistical, personnel, and/or technical data supplied by the Department to the Operator are confidential. The Operator is required to use reasonable care to protect the confidentiality of such data. The use, sale, or offering of this data in any form by the Operator, or any individual or entity in the Operator's charge or employ, will be considered a violation of the Operating Agreement and may result in termination, as well as the Operator's suspension and debarment from State contracting. In addition, such conduct may be reported to the State Attorney General for possible criminal prosecution.

9. ADDITIONAL PAYMENTS (SELF HELP)

If Department incurs any expense by reason of Operator's breach of this Agreement or Operator's failure to perform any obligation hereunder, Operator shall be liable for payment of such reasonable expense, including reasonable attorney's fees and costs, which shall be deemed an Additional Operating Agreement Payment and be added to and become part of the next Base Payment due to be paid by Operator.

10. MOVEABLE AND NON-MOVEABLE TRADE FIXTURES

A. Operator shall be required to provide the following moveable trade fixtures:

1. A minimum of five (5) mobile units for provision of food, beverages, novelties and souvenirs, pretzels, Italian ice, etc.
2. A quality, semi-permanent (fixed, but temporary) concession area within a

pre-approved portion of the Terminal Building or Concourse consisting of a full-service food preparation and sales area, including high-quality wood shelving, display racks and storage closets for novelties. Mobile units will not be permitted in the Terminal Building.

3. A minimum of one (1) dedicated pickup/delivery vehicle.
4. Storage freezers.
5. Safes, point of sale devices/cash registers, and shelving.

B. Operator shall, at its sole cost and expense, provide all Non-Moveable Trade Fixtures, as that term is defined in subparagraph 15C of this Operating Agreement, and all Moveable Trade Fixtures, as that term is defined in subparagraph 15D of this Operating Agreement (collectively, "Fixtures"), in sufficient quantity and quality necessary for the management, maintenance and operation of the Basic Concession Services and Catering/Event Management Services, in accordance with this Operating Agreement.

C. All Non-Moveable Trade Fixtures, which for the purpose of this Operating Agreement shall be defined as including fixtures, equipment and other property necessary for the maintenance, management and operation of the Basic Concession Services and Catering/Event Management Services in accordance with this Operating Agreement, attached to and/or physically incorporated into the Park Property, shall be the property of the Department. Operator has submitted an inventory of Non-Moveable Trade Fixtures and Department has acknowledged receipt of and approved the Inventory of Non-Moveable Trade Fixtures. Said Inventory is attached to and made a part of this Operating Agreement as Exhibit E. Operator shall not change the quality of, remove, replace, or add new Non-Moveable Trade Fixtures without first obtaining the express written approval thereof by Department. Said approval shall be issued based on Department's reasonable determination that the change in quality, removal, replacement and/or addition of new Non-Moveable Trade Fixtures is consistent with this Operating Agreement. In the event of any removal, replacement and/or addition, Operator shall submit a revised Inventory to Department within twenty (20) days after said removal, replacement or addition.

D. All Movable Trade Fixtures, which for the purpose of this Operating Agreement shall be defined as including tables, chairs, linens, china, glassware, silverware, display racks and any other property necessary for the maintenance, management and operation of the Basic Concession Services and Catering/Event Management Services in accordance with this Operating Agreement, placed or used in the Park Property by Operator that are not attached to and/or physically incorporated in the Park Property, shall be the property of Operator. Operator has submitted an Inventory of Movable Trade Fixtures and Department has acknowledged receipt of and approved the Inventory of Moveable Trade Fixtures. Said Inventory is attached to and made a part of this Operating Agreement as Exhibit F. Operator shall not change the quality of, remove, replace, or add new Moveable Trade Fixtures without first obtaining the express written approval thereof by Department. Said approval shall be issued based on Department's reasonable determination that the change in quality, removal, replacement and/or addition of new Moveable Trade Fixtures is consistent with this Operating Agreement. In the event of any removal, replacement and/or addition, Operator shall submit a revised Inventory to Department within twenty (20) days after said removal, replacement or addition.

E. Operator shall, at its sole cost and expense, repair and maintain all Fixtures in good order and repair and replace all Fixtures as necessary so that the type and number of Fixtures described in each Inventory is available at all times for the management, maintenance and operation of the Basic Concession Services and Catering/Event Management Services in accordance with this Operating Agreement.

F. Prior to the End of Term of this Operating Agreement, Operator shall sell to Department those Moveable Trade Fixtures selected by Department from the then current inventory of Moveable Trade Fixtures at a mutually agreed upon price, free of all liens, encumbrances or restrictions. If department elects to purchase any Moveable Trade Fixtures, Department shall select those Fixtures it intends to purchase at least thirty (30) days prior to the expiration of the termination of this Operating Agreement. Department shall have a period of six (6) months after said selection to pay Operator for the Movable Trade Fixtures purchased.

11. PURPOSE

Operator agrees to operate the Park Property for its intended purpose in the manner set forth in the RFP and the Operator's Bid Proposal. The Operator may not operate or use the Park Property for any other purpose without the prior written consent of the Department, which may be given at the Department's sole discretion.

12. CONDITION OF PARK PROPERTY

Operator has inspected the Park Property and accepts it in "as is" condition and without representation or warranty of any kind by Department, including, without limitation, any representations or warranties of fitness for a particular purpose.

13. MONTHLY REPORT

On or before the tenth (10th) of each month during operation, Operator shall assemble the following: (1) a separate "Monthly Report" containing a Statement of Total Gross Receipts, excluding New Jersey State Sales Tax, derived by Operator from all operations approved by Department during the previous month for both Catered Events and Food/Catering/Novelty operations/locations; and (2) the daily reports showing each day's sales activity. These reports shall be sent to the Department on a quarterly basis.

14. OPERATIONAL MANAGEMENT PLAN

A. Operator has submitted to Department and Department has approved a comprehensive plan for the Basic Concession Services, Catering/Event Management Services, Restaurant (*optional, depending upon successful bidder's proposal*), and other services proposed by Operator in its Operational Management Plan that have been approved by the Department. The Operational Management Plan is incorporated in and made a part of this Agreement as Exhibit D. The Operational Management Plan consists of the following:

- i. a detailed description of the proposed services to be provided by Operator;
- ii. a description of fixtures and equipment to be provided by Operator
- iii. a staff organization plan which shall include number of employees, description of duties and qualifications for each position
- iv. A plan detailing items of food, novelties and souvenirs to be sold from fixed units and their projected prices, within the parameters specified in Paragraph 18 of the Operating Agreement.
- v. A Mobile Unit Plan, including: the number and proposed general locations of all mobile units (from the list of available locations set forth in Section **1.3.1A**); all food, novelties and souvenirs to be sold from such units; the projected prices of all food and items for sale, within the parameters specified in Paragraph 18 below; and pictures of all mobile units, along with signage.
- vi. Operator's procedure for booking events, including deposit, refund and cancellation policy;
- vii. Operator's fee schedule*, including deposit, refund and cancellation policy;
- viii. The financial management system and internal control procedures to be established;
- ix. an emergency procedures plan;

- x. proposed months, days and hours of operation for each service to be provided;
 - xi. identification of each room in which Operator intends to serve alcohol, and the hours of service;
 - xii. proposed plans for improvements
 - xiii. plan for ensuring that the staff of Liberty State Park (“Park Staff”) is notified of all events occurring on the Park Property once the events are booked and that Park Staff has electronic access to the full calendar of events on the Park Property at all times;
 - xiv. plans for constructing and operating a public restaurant should include a construction schedule, initiation dates, anticipated completion dates, detailed plans for operating restaurant, including proposed hours of operation and the types of food to be sold.
- B. Operator shall be permitted to amend the Operational Management Plan from time to time, subject to the prior written approval of the Department. Department’s approval of a proposed amendment shall be based upon Department’s determination that the proposed amendment is necessary and reasonable.
- C. Operator shall not deviate from the approved Operational Management Plan without submission and approval of amendments by Department. Operator’s deviation from the approved Operational Management Plan without such approval may be grounds for suspension of operation under Paragraph 40Ai of this Agreement and/or termination of this Agreement under Paragraph 40Aii of this Agreement.

15. HOURS OF OPERATION AND LIMITATIONS

A. Liberty State Park Hours of Operation:

Hours of Operation of Public Areas in Park Property

Dates: January 1 to December 31

Days: Sunday through Saturday

Hours: 8:00 a.m. to 6:00 p.m.

B. The Park Property shall be available for Operator to conduct business during the following dates, days, and hours as specified below:

Waiting Room and Blue Comet – Winter (start times include setup)

Dates: October 1 to April 1

Days: Sunday through Saturday

Hours: 2:30 p.m. to 11:00 p.m.

Waiting Room and Blue Comet – Summer (start times include setup)

Dates: April 1 to September 31

Days: Sunday through Saturday

Hours: 3:30 p.m. to 11:00 p.m.

Concourse and South Field

Dates: October 1 to April 1

Days: Sunday through Saturday

Hours: 6:00 am to 11:00 p.m.

Terminal Building– Food/Novelty Stands (Required Hours of Operation)

Dates: January 1 to December 31

Days: Sunday through Saturday

Hours: 8:00 a.m. to 5:30 p.m.

The Superintendent of Liberty State Park (“Park Superintendent”) shall have sole authority to determine whether or not an area will be closed due to inclement weather. The Department shall not be responsible to Operator for any loss or damage caused by such determination.

16. PARK CLOSURE

A. Department reserves the right, in its sole discretion, to close public access to all or part of the Park as Department determines to be necessary due to the lack of availability of sufficient funds specifically appropriated for the maintenance and operation of the Park. If Department determines to close part of the Park, Operator shall continue to conduct those operations in the area of the Park open to public access that Operator would operate in under this Agreement if the entire Park was open. Operator hereby waives any right, claim or remedy available to Operator at law or equity as a result of Department's action under this paragraph and Department shall not be liable to Operator and/or any party claiming through Operator for damages or compensation as a result of Department's action under this paragraph.

B. Operator shall commence full operation within five (5) days after the Park or the affected part thereof is reopened to the public.

17. PRODUCT QUALITY, INVENTORY, AND PREPARATION

Operator shall sell only food products of good quality and shall at all times be completely responsible for obtaining and maintaining sufficient inventories of all food products and novelty items to meet the needs of the public.

18. PRICES

Operator shall submit in writing proposed prices to be charged for all products and services, including but not limited to: event fees; catered menu items; accessories; food; and novelty items. Operator shall obtain the written approval of Department for said prices at least thirty (30) days prior to the commencement of operations and on an annual basis thereafter during the term of this Agreement. The Department shall have the right to approve or reject the items and prices. Operator shall submit all proposed price changes in writing to and obtain the written approval of Department before the proposed change can become effective. At no time shall Operator's prices exceed the fair market or prevailing local prices charged for similar products. All food & novelty prices must be prominently displayed and properly sized to be easily read by patrons at all times.

19. STAFF

A. Operator shall engage a sufficient number of reliable, competent, and qualified staff of legal age for operation and management of each location(s) covered by this Agreement to meet the needs of the public unless an alternative staffing plan is approved by the Park superintendent.

B. If Department determines that Operator has not provided a sufficient number of reliable, competent and qualified staff of legal age for operation and management of the services to be provided under this Operating Agreement, Operator shall, upon receipt of written notification from Department, correct the staffing deficiencies described in said notice. If the deficiencies described in said notice are not corrected by Operator, upon receipt of written notification from Department, Department may suspend Operator's operation as provided in Paragraph 40Ai of this Operating Agreement and/or terminate this Operating Agreement under Paragraph 40Aii of this Operating Agreement.

C. Operator's employees are to wear apparel and name tags to identify and distinguish them as concession employees. The type of apparel and identification is subject to prior approval by Department.

20. MOBILE UNITS

A. The Operational Management Plan, which has been approved by Department, includes a Mobile Unit Plan addressing the number of units, general locations of the units, items to be sold, proposed prices, and pictures of all mobile units, including signage. The general outdoor locations in which Operator may operate mobile units include the following, described more particularly in the map attached as Exhibit C: the Train Baggage Car, along Liberty Walk,

adjacent to walkways, plaza, roadways, parking lots, and playgrounds. The specific locations within these designated locations shall be agreed upon between the Operator and Park Superintendent and approved by the Department. Mobile units shall not be operated inside of any building, obstruct pedestrian walkways, or obstruct vehicular traffic. Any violations of these conditions shall result in the loss of mobile unit usage and may be deemed a default of this Agreement.

B. The minimum required complement of mobile units, in-season, is five (5) units. The mobile units must be assorted and capable of serving hot or cold items, such as hot dogs, hamburgers, pretzels, soda, ice cream, Italian ice, novelties, and any special but reasonable item requests.

C. Operator shall maintain all mobile units in a clean and neat condition, replacing, repairing, and painting each pushcart as needed. All signage and prices shall be visible and easily readable by the visiting public and previously approved by the Department.

D. Operator reserves the right to approve mobile units based on their quality and appearance.

E. Storage areas for the mobile units will be provided by the Department.

21. MAINTENANCE AND REPAIRS

A. Operator shall preserve and maintain in good and clean condition, reasonable wear and tear excepted, all State structures and equipment, including the exhaust system(s), now installed or which may hereafter be installed or located in any Park Property. Operator shall service and clean the exhaust systems annually during the last week in September. Operator is completely responsible for the interior maintenance of the structure(s) and cleanliness of the Park Property.

B. Upon expiration or termination of the Agreement, Operator shall deliver up peaceable possession of the Park Property and State-owned equipment to Department in as good and clean condition as the Park Property and equipment were delivered at the commencement of the Agreement, reasonable wear and tear excepted. In the event that Operator does not deliver up possession as herein provided, Department may restore the premises and equipment to such condition, and the cost thereof shall be paid by Operator to Department within fifteen (15) days after demand therefor.

C. Operator shall, at its sole cost and expense, keep and maintain the Park Property, including any improvements constructed or located thereon, clean, neat, and well maintained.

D. Operator shall, prior to the commencement of operations under the Agreement, provide to Department for each location(s) an equipment maintenance plan, together with a schedule for preventative maintenance and report on maintenance completion and equipment condition. Failure to comply with this preventative maintenance schedule shall result in the Operator being responsible for all repairs or replacement of equipment. The review and Department inspection of each location(s) and its equipment will be conducted during the routine inspection of each location and as a part of the year-end close out inspection. Failure to maintain, repair, replace, or pay for equipment as above provided shall be considered a material breach of this Agreement and shall be cause for termination hereof in the discretion of the Department.

E. Operator shall be responsible for and ensure that all patrons, sub-operators, licensees, and permittees are satisfying all obligations to maintain and repair areas occupied by them as required under any sub-operating agreement or other applicable legal instrument.

22. GARBAGE DISPOSAL, RECYCLING AND BIOGRADABLE MATERIALS

A. Operator shall be responsible for maintaining the cleanliness of the Park Property. The Operator shall ensure placement of all garbage and trash generated by its operation in

designated containers and ensure that said containers are emptied daily or as more frequently required by the Department at a location within the Park designated by the Department. Disposal cost from this location shall be borne by the Department. The Operator shall provide such additional trash containers as may be required to keep the immediate area clean at all times. The type of trash container provided by the Operator shall be approved by the Department prior to installation.

B. Operator shall keep the Park Property free of trash and be responsible for the collection, disposal, and recycling of all garbage, rubbish, and other waste from the areas described. Operator shall participate in and comply with all recycling programs.

C. Any wrapping, containers, bowls, plates, cartons, or cups that are not intended for reuse must be composed of biodegradable material, i.e. material capable of being broken down from a complex molecular structure into simpler gases and organic compounds by living microorganisms.

23. UTILITIES

All costs associated with the Operator's water usage and septic system usage will be paid for by the Department, as will utility usage costs other than for phone and data lines. Operator will be responsible for installation and usage fees for all phone, fax, internet and other data lines, the placement of which on Park Property must be approved in advance by the Park Superintendent.

24. SECURITY

Department is responsible for the security of the Terminal Building during public hours and when the building is unoccupied. Operator is responsible for providing security for events held on Park Property after public hours and to ensure the Terminal Building is completely secure after every evening and/or off-hours event and may be held liable if damage occurs due to its negligence in properly securing same.

25. TAXES AND ASSESSMENTS

All taxes and assessments that might be imposed during the Term of this Agreement by any governmental body by reason of the Operator's operation of the Park Property shall be paid by Operator. If any tax or assessment may be legally paid in installments, Operator shall have the option to pay such tax or assessment in installments, except that each installment thereof and all interest thereon must be paid by the final date fixed for the payment thereof, and in the event that the whole amount thereof is not paid prior to the expiration of the Term of the Agreement, the payment thereof shall remain a continuing obligation of Operator after the expiration or termination of the Agreement. Operator immediately shall forward any notice of such tax payment to Department and any notice of assessment, tax bill, or any other notice, correspondence or document relating to local property taxation of the Park Property to the Department.

26. ACCESS TO PARK PROPERTY

During the Term of this Agreement, as the owner of the Park Property, the State retains the unfettered right to enter the Park Property for any reason or no reason at all.

27. DEVELOPMENT OF PARK PROPERTY

Any other provision herein contained to the contrary notwithstanding, in the event that Department gives Operator written notice that Department requires all or any part of the Park Property for development or use for any public purpose, Operator shall, within the period set forth in said notice and without any compensation therefor by Department to Operator, abandon use of the Park Property or part thereof designated by Department within the notice period.

28. ADVERTISEMENT AND PROMOTION

A. Operator shall not post or allow any signs or advertisements of any description to be painted or posted on the Park Property, any of the buildings or structures on the Park

Property, and/or on any other property or improvement comprising part of Liberty State Park unless specifically approved by Department in writing. Operator shall not use the Department's or State's names, logos, images, or any data or results arising from the Agreement as part of any commercial advertising without first obtaining the written consent of the Department. Operator shall not be permitted to change or profit from the name of any structure or building on the Park Property by, for example, selling or licensing naming rights to the Park Property. Operator shall not change the name of any part of the Park Property without the prior written consent of the Department. Operator shall not issue news releases pertaining to any aspect of the services being provided under the Agreement without the prior written consent of Department.

B. Operator shall, in all promotion and advertisement of and any scheduled event(s) at or pertaining thereto, provide that the Park Property is administered by the State of New Jersey, Department of Environmental Protection, Division of Parks and Forestry as part of Liberty State Park.

C. Prior to implementation of any and all promotion and advertisement of the Park Property and any scheduled event(s) at or pertaining thereto, Operator shall submit to and obtain written approval by Department of all plans for promotion and advertisement of the Park Property. Such approval shall not be unreasonably withheld. In the event that Department does not approve or disapprove an advertisement or promotion plan within fifteen (15) days after receipt thereof by Department, said advertisement and promotion plan shall be deemed to have been approved.

29. IMPROVEMENTS OR CONSTRUCTION

A. Operator will have the option to install an audio/sound system and an architectural lighting system on the first floor of the Terminal Building with Department's prior approval. Operator must submit complete plans and receive Department approval prior to the commencement of any work. Department will have the option to retain systems at the expiration or termination of the Agreement, or request their removal by Operator.

B. Operator will have the option to install a catering or preparation kitchen within the designated 1,000 square feet of Room 107 in the Terminal Building. Operator must submit complete plans and receive Department approval prior to the commencement of any work. All Non-Moveable Trade Fixtures as defined in Paragraph 10C, installed by Operator, shall become the property of Department at the termination of this Agreement.

C. As the Park Property is listed in the New Jersey Register of Historic Places, all preservation, restoration, improvement, maintenance and all other work of any nature (including labor and material) that will affect historical aspects of the Park Property, either external or internal, to the land or structures shall be done in compliance with all federal and State statutes and regulations pertaining to the designation of the Park Property as an historic site including but not limited to the "Standards for Historic Preservation Projects" published by the Secretary of the United States Department of the Interior and after approval by the New Jersey Historic Preservation Office and the New Jersey Historic Sites Council. Any work on the Park Property shall be considered to have an effect on whenever any condition of the undertaking causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological or cultural characteristics that qualify the premises to meet the criteria of the State and National Register. An effect occurs when an undertaking changes the integrity of location, design, setting, materials, workmanship, feeling or association of the premises that contributes to its significance in accordance with the State and National criteria.

D. Operator shall not enter into any contract for or commence any work, renovation, restoration, preservation, or improvement project, including but not limited to the construction or placement of any non-permanent building, structure, or any change in the natural condition of the Park Property (collectively "Improvements"), without first submitting to Department, and obtaining Department's written approval of, an Improvement Plan for the proposed Improvement. The Improvement Plan shall include but not be limited to: (a) a description (including plans and specifications when deemed appropriate by Department) of each Improvement; (b) a schedule for initiation and completion of each Improvement; (c) a statement whether each Improvement will be performed by Operator or a contractor; and (d) such additional information

that Department may reasonably require to determine whether to approve the proposed Improvement.

E. Department's approval shall be based upon Department's determination that Operator is capable of completing the proposed Improvement, that the intended use and character of the proposed Improvement is consistent with the purposes of this Operating Agreement, is compatible with the natural condition of the Park Property, is consistent with the terms of the grants, agreements, and/or statutory funding sources under which Department acquired or developed the Park Property, and will not pose a threat to public health and safety. As approved by Department, said Improvement Plan shall become a part of this Operating Agreement by reference, and Operator shall not modify or deviate therefrom without first obtaining Department's express written approval.

F. All Improvement Plans submitted to Department by Operator under this Paragraph are for the purpose of assisting Department in determining whether to approve the proposed Improvement under the criteria for approval set forth in Subparagraph D of this Paragraph. Department's approval of any such plan through the Division of Parks and Forestry shall not be construed to relieve Operator of its responsibility to obtain and maintain all licenses, certificates, permits, and approvals now or subsequently required by Federal, State, and local authorities for the construction and use of the Improvement. Operator shall, prior to the commencement of any Improvement, apply for and obtain all Federal, State, and local licenses, certificates, permits, and approvals required for construction of the proposed Improvement. Upon the issuance of said licenses, certificates, permits, and approvals, Operator shall submit copies of same to Department and then commence the Improvement project in accordance with the approved Improvement Plan. All construction shall be done in a good and workmanlike manner in accordance with the approved Improvement Plan and all requisite licenses, certificates, permits, approvals, and any other requirements of federal, State, or local authorities having jurisdiction.

G. Approval by Department of design plans, specifications, and reports submitted by Operator in accordance with this Operating Agreement shall not in any way relieve Operator of responsibility for the technical accuracy thereof. Operator is responsible for the professional quality, technical accuracy, timely completion, and coordination of all designs, drawings, specifications, and reports furnished under this Operating Agreement. Operator shall, at its sole cost and expense, correct or revise any errors, omissions, or other deficiencies in its designs, drawings, specifications, and reports. Approval or acceptance thereof by Department shall not be construed as a waiver of any rights of Department under this Operating Agreement or any cause of action arising out of the performance of this Operating Agreement.

H. Department reserves the right to approve the location, type of structure, and/or physical alteration involved in any Improvement and to require that Improvements be constructed or placed in such a manner that they may be removed with minimum damage to the Park Property.

I. Operator shall, prior to the commencement of any Improvement, apply to all federal and State authorities having jurisdiction over the Park property and the Improvement to be performed for building and other permits, licenses and approvals required for construction of the proposed Improvement. Prior to commencement of construction, Operator shall give Department satisfactory written evidence that Operator has obtained all required permits and approvals. Upon the issuance of all required building and other permits, licenses and approvals, Operator shall commence and diligently prosecute the Improvement by one or more general contractors and/or subcontractors. All construction shall be done in a good and workmanlike manner, in accordance with the approved plan and requisite building and other permits, licenses and approvals and other requirements of federal and State authorities having jurisdiction including, but not limited to, all federal and State laws and rules applicable to the historic site.

J. Operator may enter into contracts for the performance of construction of an Improvement, provided that in no such event shall Operator's obligations under this Agreement be deemed to be diminished thereby. Nothing contained in any such contracts shall be construed as creating any contractual relationship between any contractor and subcontractor and Department. Prior to entering into any such construction contract, Operator shall submit a copy of the proposed contract and a statement of the proposed contractor's qualifications to Department and obtain Department's written approval of the contract and contractor. Department reserves the right to reasonably disapprove the use of any contractor, and in such

event, Operator shall promptly secure the services of a contractor reasonably acceptable to Department. Department may, at its own cost and expense, monitor Operator's construction management.

K. For any Improvement undertaken as a single project and involving an estimated cost aggregating more than Twenty Thousand (\$20,000.00) Dollars, Operator shall, at the request of Department: (i) provide to Department, as security for the satisfactory completion of the construction of the project in form and substance satisfactory to Department, a corporate surety bond of a corporate surety company satisfactory to Department in the amount of 100% of the cost of construction of the project naming Department and Operator as co-obligee; and (ii) provide to Department a labor and material payment bond of a corporate surety company satisfactory to Department and meeting the requirements of N.J.S.A. 2A:44-143 providing for the prompt payment for materials, supplies, labor, services and equipment, naming Department and Operator as co-obligee in form and substance satisfactory to Department.

L. Prior to the commencement of construction, Operator shall deliver to Department certificates of insurance showing that Operator and/or its contractors and subcontractors have obtained insurance coverage during construction as follows:

1. Completed Value Builder's Risk insurance with standard fire and extended coverage and, to the extent that insurance against any additional risk is obtainable at standard rates, "all-risk" extended coverage endorsement;
2. Contingent Liability and Comprehensive General Public Liability: Insurance with a Contractual Liability endorsement (including insurance with respect to owned or operated motor vehicles) with aggregate limits of not less than One (\$1,000,000) Million Dollars with respect to bodily injury, death or property damage for anyone accident; and
3. Worker's Compensation Insurance applicable to the Laws of the State of New Jersey and Employer's Liability Insurance with limits of not less than One Hundred Thousand (\$100,000.00) Dollars per occurrence for bodily injury liability and One Hundred Thousand (\$100,000.00) Dollars occupational disease per employee with an aggregate limit of Five Hundred Thousand (\$500,000.00) Dollars occupational disease

The insurance policies described in H1 and H2 above shall name Department as an additional insured.

M. All improvements undertaken or made without Department's written approval and/or for which Operator cannot document to the satisfaction of Department that the Improvement was completed in accordance with requirements of all federal, State, and local government authorities having jurisdiction shall be removed by Operator on Department's demand. Operator shall, at its sole cost and expense, repair any damage to the State-owned property caused by Operator's construction and/or removal of any unauthorized or unacceptable improvement.

N. Upon completion of any Improvement, Operator shall, as a condition precedent to Department's acceptance and Operator's use and operation thereof as part of the Park Property, deliver to Department: (i) copies of all permanent certificates of occupancy necessary for use and occupancy of the Improvement; (ii) copies of final and complete waivers by Operator's general contractor and its subcontractors of their rights to file or assert a mechanic's lien against any part of the Park Property or Improvement or any work performed; and (iii) one complete set of reproducible "as-built" or record drawings of the Improvement.

O. All Improvements hereafter constructed on the Park Property by Operator shall be the property of Department. Upon the expiration or termination of this Operating Agreement, Operator shall turn over use and operation thereof to Department free of any liens or encumbrances and without payment of any compensation therefor by Department to Operator.

30. HISTORIC SITES AND ARTIFACTS

A. The Park Property is listed in the New Jersey Register of Historic Places. Operator shall at all times comply with conditions of the New Jersey Historic Council and New Jersey Historic Preservation Office in its approval of Operator's plan for the preservation, restoration, repair and improvement of the Park Property. Operator shall not modify, change or deviate therefrom without first obtaining the express written approval thereof by Department and the New Jersey Historic Sites Council, and the New Jersey Historic Preservation Office.

B. In the event that any historic artifacts or items appearing to be of a historic nature are uncovered or discovered during the course of Operator activities on the property, the Superintendent of the State Park and/or the State Park Police on duty are to be notified. Such historic articles are to be left in place until inspection by appropriate State Park Service personnel who will ascertain their historic significance and issue instructions regarding handling and removal. Such items are the property of the State of New Jersey and shall be surrendered to State Park Service representatives accordingly.

31. INDEPENDENT PRINCIPAL

Operator shall, at all times, act as independent principal and not as an agent or employee of the Department. Operator agrees not to enter into any agreement or commitment on Department's behalf.

32. INDEMNIFICATION

A. Operator shall, for itself, its successors and assignees, assume all risks and liabilities arising out of Operator's use, development, management, maintenance, improvement, and operation of the Park Property. Operator covenants to defend, protect, indemnify, and save harmless Department and each and every of its officers, agents, employees, successors, and assignees and hereby releases Department and each and every of its officers, agents, employees, successors, and assignees from and against any and all such liabilities, losses, damages, costs, expenses (including reasonable attorney's fees and expenses), causes of action, suits, claims, demands, or judgments of any nature arising from or claimed to arise, in whole or in part, in any manner out of, be occasioned by, or result from:

1. any injury to, or the death of, any person in or on, or any damage to property which occurs in, on, or about the Park Property or upon any sidewalk or walkway within the Park Property or in any manner growing out of or connected with the use, non-use, condition, or occupancy of the Park Property or any part thereof, or the construction or repair of any Improvements of the Park Property;
2. any act, error, or omission of Operator, its agents, servants, employees, contractors, invitees (express or implied), or anyone claiming by or through Operator in the performance of this Agreement;
3. violation of any agreement or condition of this Agreement by Operator, its agents, employees, contractors, invitees (express or implied), or anyone claiming through Operator;
4. violation by Operator of any contracts, agreements, or restrictions of record concerning the Park Property; or
5. the failure or omission to comply with any insurance policy required under this Agreement or any federal, State, or local law, ordinance, rule, or order affecting the Park Property or Operator's use thereof.

B. Operator agrees that any contract with its contractors and consultants shall require such contractors and consultants to defend, indemnify, protect, and save harmless Department and release Operator and Department and their officials and employees from and against any suits,

claims, demands, or damages of whatever kind or nature arising out of or claimed to arise out of in whole or in part any negligent act, error, or omission of the contractor, consultant, or their agents, subcontractors, servants, and employees in the performance of any work or professional services on or for the benefit of the Park Property.

C. Department and Operator shall, as soon as practicable after a claim has been made against either of them, give written notice thereof to the other, along with full and complete particulars of the claim. If suit is against Department, Operator, or any of its agents, servants, or employees, it shall expeditiously forward or have forwarded to the other every demand, complaint, notice, summons, pleading, or other document received by or then in its possession of the possession of its representatives.

D. It is expressly agreed and understood that any approval by Department of the work performed or reports, plans, and specifications provided by Operator shall not operate to limit the obligations of Operator assumed pursuant to this Agreement.

E. Operator's liability pursuant to this Paragraph shall continue after the termination or expiration of this Agreement with respect to any liability, loss, expense, or damage resulting from acts arising or claimed to arise prior to the termination or expiration hereof and/or obligations of Operator under this Agreement that survive such termination or expiration. .

F. Operator's indemnification obligations are not limited by, but are in addition to, the insurance obligations contained in this Agreement.

G. The provisions of this indemnification clause shall in no way limit the obligations assumed by Operator under this Operating Agreement, nor shall they be construed to relieve Operator from any liability or to preclude Department from taking any other actions available to it under any provisions of this Operating Agreement or at law or in equity.

H. All claims asserted against the Department by the Operator shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq. and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. Nothing in the Operating Agreement shall be construed as a waiver by the Department of any warranty, expressed or implied, or any remedy at law or in equity.

33. INSURANCE

A. Operator shall, at its sole cost and expense and for the Park Property and operations described in this Agreement, secure and maintain in full force and effect at all times during the term of this Agreement, insurance for any damages imposed by law and assumed under this Agreement of the types and in the amounts hereinafter provided:

1. Public liability as broad as the standard coverage forms currently in use in the State of New Jersey which shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall be endorsed to include:

- Broad Form Comprehensive General Liability
- Premises/Operations
- Products/Completed Operations
- Liquor Law Legal Liability
- Protection and Indemnity; and
- Operator Owned, Operated, or Non-owned Motor vehicles.

The limits of liability for Bodily Injury and Property Damage shall not be less than One Million Dollars (\$1,000,000) per occurrence combined single limits for each location covered by this Agreement.

2. Property insurance to cover loss or damage on an "All Risk" of physical loss form of coverage against fire, loss, theft, and damage on the contents of anything located on the Park Property that is owned by Operator. Said insurance shall be in an amount not less than the appraised value of those contents. Operator shall obtain and provide, at its own expense, an appraisal of the contents owned by Operator for the purpose of obtaining and maintaining the

aforementioned insurance.

3. Worker's Compensation applicable to the laws of the State of New Jersey and Employer's Liability Insurance with limits of not less than \$100,000 per occurrence Bodily Injury, each occurrence; \$100,000, as well as Occupational Disease, each employee, with an aggregate limit of \$500,000.

4. Loss or damage by accidental occurrence to steam boiler, air conditioning equipment, pressure vessels or similar apparatuses, and piping, if applicable, now or hereinafter installed in the building where applicable, shall be insured under a comprehensive form Boiler and Machinery policy. Limit of liability shall not be less than \$25,000 per accident with no applicable deductible. Department reserves the right to revise such limits from time to time, giving due regard for comparable coverage being maintained in other comparable buildings.

5. Such other insurance and in such amounts as may from time to time be reasonably required by Department against other insurable risks which at the time are commonly insured against in the case of premises similarly situated with due regard to the type of improvements and type of use and operations to be conducted by Operator under this Agreement.

6. The limits of said policies described in (1) through (5) above shall be increased from time to time to meet changed circumstances, including but not limited to changes in the purchasing power of the dollar, as measured by changes in the Consumer Price Index, and changes indicated by the course of plaintiffs' verdicts in personal injury actions.

B. Operator shall require any person providing any service and/or conducting any activity on the Park Property, as part of Operator's operation thereof, to secure and maintain in force at all times during the provision of any service and/or conduct of any activity thereon, as part of Operator's operation of the Park Property, insurance coverage of the types and in at least the minimum amounts required under subparagraph A of this Paragraph.

C. All policies of insurance issued in accordance with this Agreement shall provide that the proceeds thereof shall be payable to Department and Operator as their respective interests may appear. All insurance policies required to be maintained by Operator in accordance with this Agreement shall be issued by an insurance company authorized and approved to conduct business in the State of New Jersey and shall, except for Worker's Compensation Insurance under subparagraph 3 above, name the State of New Jersey, Department of Environmental Protection as an "Additional Insured."

D. When Operator signs this Agreement and returns it to Department for signature, Operator shall provide Department with a current certificate of insurance evidencing that Operator has obtained all insurance coverage required in accordance with this Agreement. A copy of the certificate of insurance shall be attached to this Operating Agreement as Exhibit E. Failure to provide a certificate of insurance at the time of Operator's execution of this Agreement shall render this Operating Agreement null and void. The certificate of insurance shall provide for thirty (30) days' notice, in writing, to Department prior to any cancellations, expiration, or non-renewal during the term the insurance is required to be maintained in accordance with this Agreement. Operator also shall provide Department with valid certificates of renewal of the insurance upon the expiration of the policies so that Department is continuously in possession of current documentation that Operator has obtained and is maintaining in full force and effect all insurance required under this Operating Agreement. Operator also shall, upon request, provide Department with copies of each policy required under this Agreement certified by the agency or underwriter to be true copies of the policies provided by Operator. The Operator shall not allow any sub-operator, contractor, or subcontractor to engage in any activity on the Park Property without first submitting to Department a current certificate of insurance showing that the contractor or subcontractor has obtained insurance coverage in accordance with the requirements of this Agreement. Operator shall deliver the certificates to Department's address as provided in Paragraph 7C of this Agreement.

E. In the event that Operator fails or refuses to renew any of its insurance policies to the extent required by this Agreement, or any policy is cancelled, terminated, or modified such that the insurance does not meet the requirements of this Agreement, Department may immediately suspend all of Operator's operations on the Park Property until Operator obtains insurance coverage in satisfactory form in compliance with this Agreement or may proceed to

default Operator and terminate this Agreement.

F. Operator expressly understands and agrees that any insurance protection required by this Agreement shall in no way limit Operator's obligations assumed in this Agreement and shall not be construed to relieve Operator from liability in excess of such coverage, nor shall it preclude Department from taking such other actions as are available to it under any provision of this Agreement or otherwise in law or in equity.

G. The limits of insurance policies described in this Paragraph shall be reviewed by Department and Operator every two (2) years. Operator may increase the limits of said policies to meet changed circumstances including, but not limited to, changes in the United States Consumer Price Index and changes indicated by the course of plaintiffs' verdicts in personal injury actions.

34. DAMAGE TO PROPERTY

A. Operator shall, at its sole cost and expense, repair all damage caused to either the Park Property or any other land and/or improvements comprising part of Liberty State Park by Operator, its employees, agents or invitees (expressed or implied) within the period of time prescribed by Department in a written demand. In the event that Operator fails to so repair after such written demand by Department, the Department may, at its option and subject to the availability of funds from insurance coverage or appropriated therefor, elect to make said repairs, and the cost thereof shall be paid by Operator to Department within fifteen (15) days of demand therefor. Failure to make such payment shall be considered a material breach of this Agreement and may result in termination of same at Department's discretion.

B. All repairs by Operator of damage to the Park Property or any other land and/or improvements comprising part of Liberty State Park shall restore the affected property to the appearance, condition, and utility of said property immediately prior to the damage or destruction. All repairs shall be completed in accordance with plans and specifications submitted to and approved by Department under Paragraph 30C of this Agreement to the same extent as though said repair is an Improvement.

C. In the event of damage or destruction of the Park Property, in whole or in part, by fire, explosion, the elements, or otherwise during the term of this Agreement, Department may, in its discretion, either terminate this Agreement from the date of such damage and destruction or, subject to the availability of funds from insurance coverage or appropriated therefore, cause such damage or destruction to be repaired..

D. This Agreement shall not be construed to require or obligate Department to cause any damage to or destruction of the Park Property to be repaired for the benefit of Operator. Department shall not be liable to Operator for any loss occasioned by the damage to or destruction of the Park Property and/or Department's declaration that this Agreement is terminated.

35. FLAMMABLE SUBSTANCES

The Operator shall not use or permit the storage or usage of any flammable substances (including but not limited to illuminating oils, candles, oil lamps, turpentine, benzene, naphtha, or any similar substance prohibited in standard policies of fire insurance companies in the State of New Jersey) in any building or structure on the Park Property without the prior written approval of, and subject to such terms and conditions as may be required by, the Department.

36. INTOXICATED PERSONS

The Operator immediately shall notify the area Superintendent or Park Police of any intoxicated person on the Park Property.

37. COMPLIANCE WITH LAWS, LICENSES, PERMITS, AND INSURANCE POLICIES

A. Operator shall obtain, pay for, comply with, and maintain during the term of this Agreement all licenses, permits, authorizations, or any documents required by the appropriate federal, State, and local authorities for the improvement, maintenance, and use of the Park Property in accordance with this Agreement. Department agrees to cooperate fully with

Operator in obtaining same. Operator shall provide Department with satisfactory written evidence that all such licenses, permits, and approvals have been obtained prior to the commencement of the improvement, maintenance, or use of the Park Property. Operator also shall provide Department with satisfactory documentation that all such licenses, permits, and approvals have been renewed as may be required so that Department is at all times in possession of adequate documentation that Operator has obtained and is maintaining such licenses, permits, and approvals.

B. Operator shall comply with the requirements of all policies of insurance required by this Agreement.

C. Operator shall, at its sole cost and expense, comply with all duly promulgated and applicable federal, State, and local laws, rules, ordinances, or orders affecting the Park Property or the use thereof, whether or not any such laws, ordinances, rules, or orders may involve a chance of policy on the part of the governmental body enacting same.

D. If Operator is issued:

1. a notice of failure to comply with any policy of insurance required by this Agreement;
2. a summons or any notice of violation for violation of any license, permit, certification, authorization, approval, or any similar instrument required by any federal, State, or local authority having jurisdiction, necessary to improve, maintain, and use the Park Property in accordance with the provisions of this Agreement; or
3. a summons or any notice for violation of any duly promulgated and applicable federal, State, or local laws, rules, orders, or ordinances affecting the Park Property or any use thereof,

Operator shall immediately forward a copy of the notice or summons to Department, and Operator shall have such time to correct said violation as is prescribed in the notice or summons. If such violation is not cured within the prescribed period or any extension thereof, it shall be deemed a material breach of this Agreement, and Department, in addition to declaring a default of this Agreement by Operator, may, in its discretion, suspend Operator's operation of all or the affected portion of the Park Property. Operator shall indemnify Department against all liability, claim, loss, or payment of any kind arising from Operator's failure or omission to comply with any such insurance policy, license, permit, certification, authorization, approval, or any applicable federal or State law, rule, ordinance or order.

E. Operator shall comply with all rules and regulations promulgated by the Department and all applicable rules and regulations promulgated by the New Jersey State Department of Health and Senior Services.

38. PUBLIC USE

Operator shall not be construed as to effect the privileges accorded to the public's use of the Park Property or to restrain or prevent individual persons or groups of persons from bringing their own food, beverages, or recreational equipment into the Park at any time or into the Terminal Building from 8 a.m. to 6 p.m.

39. NO DISCRIMINATION; AMERICANS WITH DISABILITIES ACT

A. Operator shall comply in the performance of this Agreement with all applicable State, federal, and local statutes, rules, and regulations pertaining to discrimination and affirmative action, including but not limited to N.J.S.A. 10:2-4, the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq., and Title IV of the Civil Rights Act of 1984 (P.L. 88-352).

B. Operator shall not discriminate on the basis of age, national origin, residence, race, creed, color, disability, sex, or sexual preference in allowing the public access to and use of the Golf Course Property.

C. Operator shall not discriminate against any person, employee, or applicant for employment because of age, national origin, race, creed, color, disability, sex, or sexual preference. This provision shall include, but not be limited to, the following: employment; upgrading; demotion; transfer; recruitment; recruitment advertising; rates of pay or other forms of compensation; layoff or termination; and selection for training, including apprenticeship.

D. Operator shall make all facilities and programs accessible to the disabled in compliance with the Architectural Barriers Act of 1968, 42 U.S.C.A. 4151 et seq., Title VI Civil Rights Act, Section 504, Americans With Disabilities Act, 42 U.S.C.A. 12101 et seq., and the New Jersey Barrier Free Subcode, N.J.A.C. 5:23-7 et seq., all as are now in effect and subsequently amended.

40. TERMINATION, EXPIRATION, AND SUSPENSION OF OPERATIONS

A. Operator shall comply with the terms and conditions of this Agreement. Failure to comply and/or the existence of any condition which Department determines to be in violation of the terms and conditions hereof shall be considered to be a material breach, in which event Department may, in addition to any other right or remedy provided for by law or in equity, terminate this Agreement as follows:

- (i) In the event of Operator's failure to (a) obtain and maintain all the insurance coverage required to be obtained and maintained under this Agreement or to provide Department with certificates of insurance documenting that Operator has obtained and is maintaining such insurance coverage; (b) provide Department with current certificates of insurance showing that its contractors or subcontractors have obtained and are maintaining insurance coverage in accordance with the requirements of this Agreement; or (c) pay when due any payments or other sums required to be paid by Operator hereunder; or (d) correct any violation described in a notice or summons issued to Operator under Paragraph 37 of this Agreement, and a continuation of such failure under (a), (b), (c), or (d) above for a period of ten (10) days after Operator's receipt of written notice thereof from Department served by certified mail, return receipt requested, termination shall, in the discretion of Department, be effective at the conclusion thereof; or
- (ii) In the event of Operator's failure to perform or comply with any of the other covenants, agreements, and conditions herein contained and a continuation of such failure for a period of thirty (30) days after Operator's receipt of written notice thereof from Department served by certified mail, return receipt requested, termination shall, in the discretion of Department, be effective at the conclusion thereof.

B. Operator shall have the right to terminate this Agreement upon ninety (90) days' written notice served upon Department by certified mail, return receipt requested. Said notice shall include a comprehensive explanation and justification of Operator's reasons for not continuing operations under this Agreement. Within forty-five (45) days after receipt of Operator's notice, Department and Operator shall determine whether the reasons for termination can be resolved to their mutual satisfaction. In the event that Operator and Department determine that said reasons cannot be resolved, termination shall become effective ninety (90) days after Department's receipt of the notice.

C. Termination of this Agreement by either party as herein provided shall not release or discharge any payment, obligation, or liability owed to the other party under the terms and conditions of this Agreement as of the date of such termination.

D. Upon expiration or other termination or cancellation of this Agreement, the Operator shall quit and surrender operation of the Park Property and leave the Park Property in a broom clean condition, without fraud or delay, and in good order, condition, and repair, reasonable wear and tear

excepted. If Operator shall fail to remove any personal property lawfully belonging to and removable by Operator within the time prescribed by any notice of termination or before the stated expiration of this Agreement, Department may remove same at the expense of Operator. Operator hereby covenants to pay any and all damages which may be caused to the Park Property by the removal of structures and personal property. The Operator's obligation to observe or perform this covenant shall survive the expiration or other termination of the Term of this Agreement. The Operator shall not remove any permanent fixtures upon expiration or other termination or cancellation of this Agreement.

E. Upon the expiration or termination of this Agreement, Operator shall pay to Department without demand or notice the sum of the following:

- (i) All payments accrued to the date of such expiration or termination and, in the event of termination, the unpaid rent for the term or until Department establishes a new operator at the Park Property, if sooner. If the Department contracts with a new operator at the Park Property for less than Operator's payments to the Department, Operator shall pay the difference until the end of the term. If Department contracts with a new operator at the Park Property for more than Operator's payments to the Department, Operator is not entitled to the excess; and
- (ii) The cost of making all restoration, renovation, improvement, and repairs required to be made by Operator hereunder and of performing all covenants of Operator relating to the conditions of the Park Property, including any improvements thereon during the term and upon expiration or sooner termination of this Agreement, is to be deemed prima facie to be the cost estimated by an architect or contractor selected by Department or the amounts actually expended or incurred thereafter by Department.

F. Operator shall, at the direction of Department, immediately suspend, delay, or interrupt operation of all or any part of the Park Property for such period of time as Department may determine to be appropriate to protect the Park Property and/or public health, safety, and welfare due to the occurrence of hazardous work conditions, emergency conditions, and/or any other cause including, but not limited to, Operator's failure to perform any of the covenants, agreements and conditions contained in this Agreement on its part to be performed, provided that Department has determined that the continuance of the operation of the Park Property may detrimentally impact the area and/or health, safety, and welfare of persons on-site. Operator hereby waives any claim, and Department shall not be liable to any party claiming through Operator, for damages, payment abatement, or compensation as a result of Department's actions under this Paragraph. Department's suspension of operations shall be in addition to any other right or remedy available by law or in equity.

41. REVOCATION CLAUSES

The Operator covenants that the decision of the Commissioner of the Department relative to the performance of the terms of the Agreement shall be final and conclusive.

42. CORPORATION

A. Any Operator that presents itself or represents itself as a corporation operating or doing business in the State of New Jersey must provide said papers of incorporation to Department along with renewals, changes, or any other document that in any way affects the current or future status of Operator as a legal corporation.

B. Operator shall adopt a resolution authorizing the execution of the Agreement. Operator shall submit a copy of said resolution to Department when Operator signs this Agreement and returns it to Department for signature. A certified copy of said resolution shall be attached to this Operating Agreement as Exhibit F.

43. ASSIGNMENT OF AGREEMENT OR SALE OF INTERESTS

A. Operator and/or any person or entity which owns a controlling interest, as herein defined, in Operator's ownership (collectively referred to as the Operator for the purposes of this

section) shall not assign or otherwise sell or transfer responsibilities under this Agreement or the operations authorized hereunder, nor sell or otherwise assign or transfer, including, without limitation, mergers, consolidations, reorganizations, or other business combinations, a controlling interest in such operations, this Agreement, or a controlling interest in Operator's ownership, as defined in this Agreement, without the prior written approval of Department.

B. Operator shall advise the person(s) or entity proposing to enter into a transaction described above that Department shall be notified and that the proposed transaction is subject to review and approval by Department. Operator shall request in writing Department's approval of the proposed transaction and shall promptly provide Department with all relevant documents related to the transaction, and the names and qualifications of the person(s) or entity involved in the proposed transaction.

C. Department, in exercising the discretionary authority set forth herein, shall, among other matters, take into consideration the management qualifications of individuals or entities which would thereby obtain an interest in the facilities or services authorized hereunder, the experience of such individuals or entities with similar operations, and the ability of such individuals or entities to operate the concession authorized under this Agreement in the public interest.

D. For the purpose of this Agreement, the term "controlling interest" in an Operator's ownership shall mean, in the instance of a corporate Operator, an interest beneficial or otherwise of sufficient outstanding voting securities or capital of Operator so as to permit exercise of substantial managerial influence over the operations of the Operator, and, in the instance of a partnership, limited partnership, joint venture, or individual entrepreneurship, any beneficial ownership of the capital assets of the Operator sufficient to permit substantial managerial influence over the operations of the Operator. Department will determine whether or not an interest in an Operator constitutes a controlling interest within the meaning hereof.

E. Operator shall not enter into any agreement with any entity or person except employees of the Operator to exercise substantial management responsibilities for the operation authorized hereunder or any part thereof without written approval of Department at least thirty (30) days in advance of such transaction.

F. In determining whether to approve any assignment of this Agreement or sale of a controlling interest in Operator's ownership, Department reserves the right to apply the standards and requirements set forth in the bid specifications published by Department to solicit bids for the operations covered by this Agreement. In addition, Department reserves the right to condition its approval of any assignment of this Agreement or sale of controlling interest in Operator's ownership upon Operator agreeing to guarantee the continued performance of the proposed assignee or transferee.

44. SUB-OPERATORS

Operator shall not enter into sub-operating or sub-contractor agreements with outside entities for the performance of any of its obligations under this Operating Agreement, without the approval of Department. If Operator has obtained a liquor license from the Division of Alcoholic Beverage Control for a restaurant or an event, it may not sub-contract the operation of the restaurant or event that involves the serving or sale of alcoholic beverages. Before Operator may allow a sub-operator or sub-contractor to begin to operate or use the Park Property, both Operator and the sub-operator/contractor must sign a sub-operating/contracting agreement, which shall be subject to Department's written approval prior to taking effect. In no event will Department and any sub-operator or sub-contractor have any contractual relationship by virtue of the sub-operator's/contractor's relationship to Operator. During the Term of this Operating Agreement, Operator shall indemnify Department and assume all responsibility for all acts/omissions of any sub-operator/contractor and for its compliance with respective sub-operating/contracting agreement.

45. BANKRUPTCY

In the event the Operator enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Operator agrees to furnish written notification of the bankruptcy to the Department with a copy to the Attorney General's Office. This notification shall be furnished

within five (5) days of the initiation of the proceedings relating to the bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and the name(s), addresses, and telephone numbers of the attorney or firm handling the bankruptcy. This obligation remains in effect until final payment is made under this Agreement.

46. CREATION OF LIENS OR ENCUMBRANCES BY OPERATOR

A. Operator shall have no power to do any act or make any contract which may create or be the foundation for any lien, mortgage, or other encumbrance upon any interest of Department in the Park Property or in the buildings or Improvements thereon; it being agreed that should Operator cause any alterations, rebuilding, replacements, changes, additions, improvements, or repairs to be made to the Park Property or the buildings or Improvements thereon or labor performed or material furnished therein, thereon, or thereto, neither Department nor the Park Property shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, but all such alterations, rebuilding, replacements, changes, additions, improvements, repairs, labor, and material, shall be made, furnished, and performed at Operator's expense, and Operator shall be solely and wholly responsible to the contractors, laborers, and materialmen furnishing and performing such labor and material.

B. If, because of any act or omission (or alleged act or omission) of Operator, any mechanic's or other lien, charge, or order for the payment of money shall be filed against the Park Property, any buildings, or any Improvements thereon, or against Department (whether or not such lien, charge, or order is valid or enforceable as such), Operator shall, at its own cost and expense, cause the same to be cancelled and discharged of record or bonded within ten (10) days after notice to Operator of the filing thereof.

C. Operator shall, upon completion of any improvement(s), provide Department with a signed copy of any and all lien(s), which shall indicate that all contractors have been paid and all lien(s) have been discharged.

47. SOLICITATION

Operator warrants that no person has been employed directly or indirectly to solicit or secure this Operating Agreement in violation of the provisions of N.J.S.A. 52:34-19 and that the laws of the State of New Jersey relating to the procurement and performance of this Operating Agreement have not been violated by any conduct of Operator, including the paying or giving directly or indirectly of any fee, commission, compensation, gift, gratuity, or consideration of any kind to any State employee, officer, or official.

48. COMPLIANCE AND PERFORMANCE EVALUATION

A. Mandatory Operator evaluation and compliance review meetings for Basic Concessions shall be conducted annually during three (3) specified periods. The meetings shall review all aspects of the concession operation insuring that quality public services are being provided on a continuing basis, in accordance with the bid specifications and this Agreement, that operational problems/concerns are addressed on a timely basis, and that all terms and conditions are clearly understood. The meetings shall be held on-site with appropriate State Park Service staff and a management/supervisory representative of the Operator. An evaluation form shall be utilized to document the evaluation meeting, which will identify any deficiencies and the corrective action required. A copy of the completed evaluation form shall be provided to the Operator's management/supervisory representative and shall be attached to and made a part of this Agreement.

B. The mandatory meetings shall be conducted during the following periods:

#1 - During the month of May prior to Memorial Day weekend.

#2 - During the first 2 weeks of August.

#3 - During the last two weeks of October.

49. ENTIRE AGREEMENT

This Agreement represents the entire agreement between the parties and all negotiations, oral agreements, and understandings are merged herein.

50. AMENDMENTS

This Agreement may be amended, supplemented, changed, modified, or altered solely upon mutual agreement of the parties hereto made in writing. This Agreement cannot be modified or amended by conduct or course of dealings.

51. CONTINUATION OF TERMS

If Department permits the Operator to continue operating the Park Property after expiration of this Agreement without having executed a new written agreement with Department, the Operator shall operate the Park Property subject to all terms, covenants, and conditions contained in this Agreement. Such continuation of operations by the Operator shall not constitute a renewal or extension of this Agreement.

52. WAIVER OF TRIAL

It is mutually agreed by and between Department and Operator that they hereby waive trial by jury in any action, proceeding, or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of Department and Operator, the Operator's use or occupancy of the Park Property, and/or any claim of injury or damage.

53. NOTICES

The parties hereto agree that all submissions, approvals, and notices that may be required under this Agreement shall be forwarded by Certified Mail, Return Receipt Requested, to the appropriate party's address that appears on page one (1) of this Agreement. Either Department or Operator may at any time change such address by mailing a Notice of Change to the stated address at least ten (10) days prior to the effective date of such change.

54. WAIVER

Failure of either party to complain of any act or omission on the part of the other party, no matter how long same may continue, shall not be deemed a waiver by said party of any of its rights hereunder. No waiver by either party at any time, express or implied, of breach of any provision of this Agreement shall be deemed waiver of breach of any other provision or a consent to any subsequent breach of the same or any other provision. The consent to or approval of any action on any one occasion by either party hereto shall not be deemed a consent to or approval of any other action on the same or any subsequent occasion. Any and all rights and remedies which either party may have under this Agreement or by operation of law, either at law or in equity, by reason of a breach by the other party shall be distinct, separate, and cumulative and shall not be deemed inconsistent with any other right or remedy, and any two or more or all of such rights and remedies may be exercised at the same time. Acceptance by either party of any of the benefits of this Agreement with knowledge of any breach thereof by the other party shall not be deemed a waiver by the party receiving the benefit of any rights or remedies to which it is entitled hereunder or by law.

55. REPORT OF INJURY

Any injury which shall occur to Operator, its servants, agents, or invitees (expressed or implied) of which Operator shall be aware shall be reported to Department immediately and in writing within twenty-four (24) hours of the incident. SPP requires immediate notification of Park Police for written report.

56. SUPERSEDES

This Agreement supersedes and cancels all prior agreements covering the Park Property.

57. SUCCESSION AND BINDING AGREEMENT

Except as otherwise set forth herein, all of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assignees of the respective parties hereto.

58. SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such term and provision of this Agreement, shall be valid and enforced to the fullest extent permitted by law.

59. HEADINGS

The article, paragraph, and subparagraph headings throughout this Agreement are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

60. PAY TO PLAY

A. This Agreement is subject to the provisions of P.L. 2005, c. 51 (N.J.S.A. 19:44A-20.13 et seq.), and compliance with said statute shall be a material term and condition of this Agreement.

B. Operator is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c.271, section 3) if the contractor receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the contractor's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us, and attached hereto as Exhibit H.

61. GOVERNING LAW

The Department and Operator agree that jurisdiction of any action hereunder shall lie in a court of competent jurisdiction in the County of Mercer, State of New Jersey. This Agreement shall be governed by and interpreted in accordance with the Laws of the State of New Jersey.

62. NO THIRD PARTY BENEFICIARIES

There shall be no third party beneficiaries of this Agreement, and no person, firm, or entity not a party to this Agreement shall be entitled to claim any right, benefit, or presumption from or estoppel by this Agreement.

63. NEGOTIATED DOCUMENT

Each and every provision of this Agreement has been independently, separately, and freely negotiated by the parties as if this Agreement were drafted by all parties hereto. The parties therefore waive any statutory or common law presumption which would serve to have this document construed in favor of or against any party as the drafter hereof.

64. PREVAILING WAGE ACT

A. Without limiting the scope of any other provision of this Agreement, Operator agrees to comply with the New Jersey Prevailing Wage Act, P.L. 1963, Chapter 150. Operator also agrees to comply with 42 USC, Section 9604 (g)(1). If any conflict exists between the New Jersey Prevailing Wage Law and Section 9604 (g)(1), the Operator must comply with the federal requirements.

B. The Operator's signature on this Operating Agreement is a guarantee that neither (Winning Bidder) nor any contractors (Winning Bidder) may employ to perform work required

under this Agreement has been suspended or debarred by the Commissioner, Department of Labor for violation of the Prevailing Wage Act, P.L. 1963, Chapter 150.

65. ATTACHMENTS

The following are attached to and made part of this Agreement:

Exhibit A – Request for Proposal, Management/Operation of Basic Concession Services and Catering/Event Management Services, Liberty State Park

Exhibit B – Operator’s Bid Response Proposal

Exhibit C – Maps of Liberty State Park (4 maps)

Exhibit D – Operational Management Plan

Exhibit E – Inventory of Non-Moveable Trade Fixtures

Exhibit F - Inventory of Moveable Trade Fixtures

Exhibit G - Certified copy of Operator’s Resolution Authorizing Execution of Agreement

Exhibit H – Vendor forms

IN WITNESS WHEREOF, the said parties have duly executed these presents the days and year first obtain written.

DEPARTMENT

STATE OF NEW JERSEY

Department of Environmental Protection

By:_____

Amy Cradic, Assistant Commissioner
Natural and Historic Resources

Date:_____

ATTEST:

By:_____

Date:_____

OPERATOR

By:_____

Date:_____

ATTEST:

By:_____

Date:_____

This Operating Agreement has been reviewed
and approved as to form by:
PAULA T. DOW
Attorney General
State of New Jersey

By:_____

Lauren J. Trasferini
Deputy Attorney General

Date: _____